UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

TOWER OWNERS INCORPORATED

Employer

and Case No. 29-RD-936

MATHEW BENCIVENGA, AN INDIVIDUAL

Petitioner

and

NATIONAL ORGANIZATION OF INDUSTRIAL
TRADE UNIONS, LOCAL UNION NO. 72, IPEU

Union[1]

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Amy Krieger, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.[2]

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[1] The name of the Union appears as amended at the hearing.

[2] The petition in the above matter was filed on December 16, 1999. On that date, by facsimile transmission, copies of the petition, a Notice of Hearing scheduling the hearing for December 27, 1999, and form NLRB-4338 were forwarded to the Employer and the Union. The confirmation receipt indicates that the Union received these documents at 12:10 p.m on December 16. On December 20, the aforementioned documents were mailed to the parties. On December 23 the Hearing Officer left a message on the Union's answering machine confirming that the hearing would be held on December 27, as previously scheduled. Form NLRB-4338, which was faxed to the Union on December 16 and mailed to the Union on December 20, provides, inter alia, that a

2. Hyman Cohen, the President of the Employer, testified that the Employer, a New York corporation with its principal office and place of business located in an apartment house on 35 Seacoast Terrace, Brooklyn, New York, is engaged in the operation of a residential apartment complex. This complex consists of two apartment houses: one located at 35 Seacoast Terrace, and a second at 1311 Brightwater Avenue, Brooklyn, New York. He further stated that during the past year the Employer derived gross revenues in excess of $500,000 from its business operations. During that same period, the Employer purchased and received at its Brooklyn apartment houses goods and materials, including oil and gas, valued in excess of $5,000 directly from points located outside the State of New York.

Based upon the above-described testimony, and the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein claims to represent certain employees of the Employer.

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party seeking an adjournment of the hearing must request it in writing and set forth the grounds for its request in detail. The Union did not request a postponement prior to the scheduled hearing date. Accordingly, the hearing was conducted on December 27. No representative of the Union appeared. Prior to opening the record, the Hearing Officer telephoned the Union and spoke to a Mr. Siegal, who identified himself as a union official. He informed her that Daniel Lasky, who appears to be the Union's Administrator, had told him that the Union would not participate in the hearing because it had not been given sufficient notice that the hearing would be held that day. The Hearing Officer warned Siegal that if the Union did not appear, the Region would conduct the hearing in the Union's absence. He said he expected the Region to do so.

I find that the Hearing Officer acted properly in conducting the hearing, notwithstanding the Union's failure to appear. Contrary to the contention of the Union, the record shows that it was notified that the hearing would be conducted on three occasions. The first notice of the Region's intent to conduct a hearing was provided 11 days prior to the scheduled hearing. At that time and again on December 20 the Union was informed, in detail, of the procedures for requesting adjournments. The Union chose not to avail itself of these procedures and never requested that the hearing be postponed.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The record shows that the Employer and the Union are parties to a collective bargaining agreement effective from March 1, 1997, to February 28, 2000. The contract covers a unit of all porters, doormen, maintenance employees, handymen, lead men A and lead men B.[3]

Inasmuch as it is well established that the bargaining unit in which a decertification election is conducted is generally coextensive with the certified or recognized unit,[4] I find the following unit appropriate for the purposes of collective bargaining:

> All full-time and regular part-time porters, doormen, maintenance employees, handymen, lead men A and lead men B employed by the Employer excluding all office clerical employees, guards and supervisors within the meaning of the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an

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[3] These positions are set forth in Article A(5), "Wages and Other Sundry Conditions". Section 1 of the contract, "Recognition," also describes the agreement as covering all production employees, shipping and receiving employees, plant clerical employees, and drivers. However, there is no evidence that the Employer employs any employees who fall into these categories.

[4] Campbell Soup Co., 111 NLRB 234 (1955).

economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether they desire to be represented for collective bargaining purposes by National Organization of Industrial Trade Unions, Local Union No. 72, IPEU.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before January 6, 2000. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of

such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street,

N.W., Washington, D.C. 20570. This request must be received by January 13, 2000.

Dated at Brooklyn, New York, this 30th day of December, 1999.

/S/ ALVIN BLYER

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
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Brooklyn, New York 11201

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